HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.496 OF 2006

BETWEEN

The Executive Engineer, R.W.S.Division,
Sanga Reddy Sadhashiv Pet, Medak District.

.....

Appellant

And

The Authority under Payment of Wages Act,
The Assistant Commissioner of Labour,
Post Sanga Reddy, Medak District & another

.....Respondents

Counsel for the Appellant : Shri Dhonday Ram Mane

Counsel for Respondent No.1 : Government Pleader for Labour

Counsel for Respondent No.2 : Shri S. Ashok Anand Kumar Endowments

Dated: 24.07.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal filed by the Executive Engineer, R.W.S. Division, Sanga Reddy, Sadashivpet, Medak for setting aside order dated

19-3-2006 passed by the learned Single Judge in Writ Petition No.4602 of 2006 is a piece of frivolous litigation usually resorted to by the employer to frustrate the adjudication of claims filed by the workers under various social welfare legislations enacted by the Parliament.

The Payment of Wages Act (for short 'the Act') was enacted in 1936 to regulate the payment of wages to certain classes of persons employed in industry. The Act defines various terms and phrases including "employed person", "employer", "wages"; casts a duty on every employer to pay wages to persons employed by him; prescribes the time for payment of wages after making permissible deductions and also provides for levy of fine. The Act also contains provision for filing of claim petition in the matter of non-payment of wages or wrongful deduction from wages. Section 17 of the Act provides for filing of appeal against orders passed under sub-sections (2), (3) and (4) of Section 15. It is, thus, clear that the Act is a code unto itself. Therefore, the remedy of appeal available to a person aggrieved by an order made under Section 15 must be treated as an effective alternative remedy.

If the authority constituted under the Act i.e. the Assistant Commissioner, Sangareddy had finally adjudicated the application filed by respondent No.2 Sri Ch. Bharat under Section 15 (2) of the Act for payment of Rs.5,915-00 representing unlawfully deducted

wages for the period from 1-1-1996 too 31-3-1996 and that order was adverse to the appellant, then he could have challenged the same by filing appeal or in an exceptional case directly invoke jurisdiction of this Court under Article 226 of the Constitution. However, without even waiting for the first stage adjudication of the claim made by respondent No.2, the appellant filed Writ Petition No.4602 of 2006 for restraining respondent No.1 from deciding the application of respondent No.2. The learned Single Judge refused to entertain the prayer of the appellant for issue of a writ of prohibition by observing that the issues arising out of the pleadings of the parties, namely, whether respondent No.2 is a workman and whether the provisions of the Act are applicable to his case can be decided by respondent No.1 and the amount involved is meagre Rs.5,915/-. Undeterred, the appellant has filed this appeal.

We have heard Shri Dhonday Ram Mane, learned counsel for the appellant and perused the record. In our opinion, the refusal of the learned Single Judge to entertain the writ petition at the interlocutory stage of the proceedings pending before the competent authority does not suffer from any legal infirmity. Rather, the approach adopted by the learned Single Judge is in consonance with the law laid down by the Supreme Court in **D.P. Maheswari v. Delhi Admn.**[1]. In that case, the Supreme Court decried the practice of filing applications by the employer for adjudication of preliminary issues in proceedings filed under the Industrial Disputes Act and observed as under:

> "Tribunals entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardizes industrial peace, should decide all issues in

disputes at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution, stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill-afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workman in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences.

Where the Labour Court while deciding the preliminary issue, in a labour dispute had considered the entire evidence on record and recorded a positive finding that the delinquent employee, whose services were terminated, was discharging the duties of a clerical nature and was a workman within the meaning of Section 2 (s) of I. D. Act 1947, its finding being not merely an inference from the mere circumstance that the delinquent was not discharging supervisory duties, the High Court could not interfere with such finding in a petition under Article 226."

By applying the ratio of the aforementioned judgment to the facts of this case, we decline to entertain the appeal, which is hereby dismissed. Needless to say that if the order passed by the prescribed authority is against the appellant, then it shall be free to avail the appropriate legal remedy.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

24.07.2006

svs

---

[1] AIR 1984 Supreme Court 153